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FIRST GENERAL COUNSEL'S REPORT

MUR: 6166

DATE COMPLAINT FILED: January 30, 2009

DATE OF NOTIFICATION: February 5, 2009

LAST RESPONSE RECEIVED: April 10, 2009

DATE ACTIVATED: April 1, 2009

EXPIRATION OF SOL: January 7, 2014
(Earliest and Latest)

COMPLAINANT:

Brian Melendez, Chair, Minnesota Democratic-Farmer-Labor Party

RESPONDENTS:

Republican National Lawyers Association
Coleman for Senate 08 and Rodney A. Axtell, in his
official capacity as treasurer
Coleman Minnesota Recount Committee and
Anthony Sutton, in his official capacity as treasurer
Republican Party of Minnesota and Anthony Sutton,
in his official capacity as treasurer
Norm Coleman

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431(4)(A)
2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(9)(A)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441a
2 U.S.C. § 441b
11 C.F.R. § 100.57(a)
11 C.F.R. § 100.91
11 C.F.R. § 100.151

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

Internal Revenue Service

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I. INTRODUCTION

The Complaint in this matter alleges that the Republican National Lawyers Association ("RNLA"), a Section 527 organization, made prohibited contributions to Coleman for Senate 08, the Coleman Minnesota Recount Committee, and the Republican Party of Minnesota ("Respondent Committees"). The alleged prohibited contributions purportedly came from funds raised by the RNLA through a solicitation posted on the RNLA's website. See Attachment 1 at 3, 4. The Complaint concludes that there is a "strong inference that the RNLA is supporting Coleman's recount efforts with soft money." Complaint at 3. The Complaint further alleges that the RNLA and the Respondent Committees failed to disclose the purported contributions in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). *Id.* at 4. Finally, the Complaint alleges that the RNLA has not registered as a political committee with the Commission, but should have because it made contributions in excess of \$1,000 to Norm Coleman's recount effort. *Id.*

The RNLA asserts in its response that it has not made any contributions to the Respondent Committees. The RNLA also claims that it has not supported Norm Coleman's recount efforts with soft money. Further, the RNLA contends that because it has not made any contributions, it has nothing to report and it is not required to register with the Commission.

The Republican Party of Minnesota ("RPM") and the Coleman Minnesota Recount Committee ("CMRC") filed a joint response in which they deny receiving any contributions from the RNLA. Norm Coleman and his principal campaign committee, Coleman for Senate 08, did not respond to the Complaint. Based on the available information, we recommend that the

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Commission find no reason to believe that the RNLA, the Respondent Committees, or Norm Coleman violated the Act in this matter and close the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The RNLA was formed in 1985 and files reports with the Internal Revenue Service ("IRS") under Section 527 of the Internal Revenue Code. See 26 U.S.C. § 527. In papers filed with the IRS in December 2008, the RNLA described its primary exempt purpose as follows:

The Republican National Lawyers Association is the principal national organization of Republican Lawyers. Members and local chapters have pledged that they will support the objectives of the Association, which are advancing professionalism of lawyers generally, advancing open, fair and honest elections at all levels of American Society in a non-discriminatory manner, and advancing career opportunity. The RNLA further builds the Republican Party goals and ideals through a nationwide network of supportive lawyers who understand and directly support Republican policy, agendas and candidates.

RNLA 2007 Return of Organization Exempt From Income Tax.

The RNLA's solicitation states, *inter alia*, "Please help the Republican National Lawyers Association stop Al Franken from stealing the election" and "You can make the difference. As the recount in the Minnesota Senate Race continues the RNLA needs assistance to help ensure a fair and honest result." [Emphasis in original] See Attachment 1 at 3. The solicitation asks the viewer to contribute to the RNLA in specified amounts ranging from \$35 to \$5,000, or in any amount of their choosing. *Id.* at 3, 4. The solicitation also contains a disclaimer stating "corporate funds are accepted." *Id.* at 5.

Although the available information does not indicate when the RNLA's solicitation was posted on its website, a link to the RNLA's solicitation appeared in an article titled "Stop Al

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1 **Franken From Stealing the Election,"** which was posted on Newsmax.com on January 7, 2009.

2 **See Attachment 1 at 1, 2.**

3 **B. Legal Analysis**

4 **1. The Available Information Does Not Support the Allegation that the**
5 **RNLA Made Prohibited Contributions to the Respondent Committees**

6
7 **The Complaint alleges that the RNLA, which accepts corporate contributions, made**
8 **prohibited contributions to the Respondent Committees. However, the Complaint does not**
9 **identify any particular contributions. The Respondent Committees deny receiving any**
10 **contributions from the RNLA,¹ and their FEC disclosure reports do not indicate the receipt of**
11 **any such contributions through March 31, 2009. The RNLA similarly denies making any**
12 **contributions to any of the Respondent Committees. The most recent disclosure report the**
13 **RNLA filed with the IRS, covering the period through December 31, 2008, which appears to pre-**
14 **date the RNLA solicitation, does not disclose any contributions to the Respondent Committees.²**

15 **More broadly, the RNLA's IRS disclosure reports covering the period 2000-2008 do not**
16 **disclose any contributions to a candidate for federal office or a political committee registered**
17 **with the Commission. All of the RNLA's disclosed disbursements have been for staff salaries,**
18 **contractors, and consultants. Accordingly, the available information does not support the**

¹ The Commission has previously concluded that any recount fund established by either a Federal candidate or a State Party, such as CMRC, is "in connection with" a Federal election under 2 U.S.C. §§ 441b(a) and 441e(a)(1)(A) and 11 C.F.R. §§ 100.91 and 100.151 and therefore must comply with the amount limitations, source prohibitions and reporting requirements of the Act. See, e.g., Advisory Opinion 2006-24 (National Republican Senatorial Committee and Democratic Senatorial Campaign Committee). The Commission's pre-BCRA regulation exempting from the definition of "contribution" gifts, loans or payments made with respect to a recount of the results of a federal election excluded only contributions from foreign nationals and corporations. See 11 C.F.R. § 100.91.

² The RNLA's mid-year disclosure report, which covers the period of January 1, 2009 through June 30, 2009, is not due to the IRS until July 31, 2009.

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1 Complaint's allegation that the RNLA has made prohibited contributions to the Respondent
2 Committees.

3 **2. The Available Information Does Not Support the Allegation that the**
4 **RNLA and the Respondent Committees Failed to Disclose Contributions**

5
6 The Complaint alleges that if the Respondent Committees have received contributions
7 from the RNLA, they and the RNLA would have to disclose those contributions, which they
8 failed to do. As discussed above, the available information does not indicate that the RNLA
9 made any contributions to the Respondent Committees. Accordingly, the available information
10 does not support this allegation.

11 **3. The Available Information Does Not Support the Allegation that**
12 **the RNLA is Required to Register with the FEC as a Political**
13 **Committee**

14
15 The Complaint states that "[a]ny political committee that makes contributions or
16 expenditures aggregating in excess of \$1,000 during a calendar year must file a statement of
17 organization with the FEC," and alleges that "[i]f the RNLA has made contributions to
18 Coleman's recount effort in excess of \$1,000, it would have been required to register as a
19 political committee," concluding that the RNLA "failed to do so." Complaint at 4.

20 The Complaint misstates the Act's political committee threshold, which is satisfied by an
21 organization *receiving* more than \$1,000 in contributions or making more than \$1,000 in
22 expenditures during a calendar year. 2 U.S.C. § 431(4)(A). The Act defines "contribution" to
23 include "any gift, subscription, loan, advance, or deposit of money or anything of value made by
24 any person for the purpose of influencing any election for Federal office." 2 U.S.C.
25 § 431(8)(A)(i). A gift, subscription, loan, advance, or deposit of money or anything of value
26 made by any person in response to any communication soliciting a contribution is a contribution

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1 to the person making the communication if the communication indicates that any portion of the
2 funds received will be used to support or oppose the election of a clearly identified Federal
3 candidate. 11 C.F.R. § 100.57(a). Finally, the term "expenditure" is defined to include "any
4 purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value,
5 made by any person for the purpose of influencing any election for federal office." 2 U.S.C.
6 § 431(9)(A)(i).

7 To address overbreadth concerns, the Supreme Court has held that only organizations
8 whose major purpose is campaign activity can potentially qualify as political committees under
9 the Act. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for*
10 *Life*, 479 U.S. 238, 262 (1986). The Commission has long applied the Court's major purpose
11 test in determining whether an organization is a "political committee" under the Act, and it
12 interprets that test as limited to organizations whose major purpose is federal campaign activity.
13 *See Political Committee Status: Supplemental Explanation and Justification*, 72 Fed. Reg. 5595,
14 5597, 5601 (Feb. 7, 2007).

15 **a. Contributions**

16 The RNLA solicitation refers to a clearly identified Federal candidate, Al Franken, and it
17 indicates that the funds received will be used to "stop Al Franken from stealing the election" for
18 the U.S. Senate. *See Attachment 1 at 3*. Although the solicitation was in connection with the
19 recount, recount activities are deemed to be "in connection with an election for Federal office."
20 *See Advisory Opinion 2006-24*, p. 2. Accordingly, funds received in response to the solicitation
21 may be considered to be contributions to the RNLA. *See* 11 C.F.R. § 100.57(a). However, the

1 available information does not indicate whether the RNLA has received more than \$1,000 in
2 response to the solicitation.

3 **b. Expenditures**

4 The Complaint alleges that the RNLA solicitation purports to use donations received in
5 response "to combat Franken's legal efforts, creating a strong inference that the RNLA is
6 supporting Coleman's recount efforts with soft money." Complaint at 3. The Complaint does
7 not allege specific expenditures that meet the \$1,000 expenditure threshold for political
8 committee status, and other available information does not indicate any such expenditures.

9 According to Michael B. Thielen, the RNLA's Executive Director, the RNLA has
10 engaged in the following activities in connection with the recount: (1) created on its website a
11 page serving as a resource for archiving news articles; (2) initiated an e-mail recruitment effort
12 for volunteers (attorneys and non-attorneys) to participate in the statewide recount; and (3)
13 distributed and posted on its website a "White Paper" specifically addressing the electoral
14 process in Minnesota and the issues raised in connection with the 2008 election between Norm
15 Coleman and Al Franken. See Affidavit of Michael B. Thielen ¶¶ 6-10, Exhibit A to the RNLA's
16 Response, at 2.

17 From the available information, it does not appear that the RNLA meets the statutory
18 threshold for political committee status through making expenditures. The available information
19 does not indicate whether the RNLA has received more than \$1,000 in contributions in response
20 to the solicitation.

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c. Major Purpose

In any event, even if the RNLA has received more than \$1,000 in contributions, the available information indicates that federal campaign activity is not the RNLA's major purpose. As noted above, the RNLA's exempt purpose under Section 527 of the Internal Revenue Code is "advancing the professionalism of lawyers generally, advancing open, fair and elections at all levels of American Society in a non-discriminatory manner, and advancing career opportunity." *See supra* at 3. Moreover, the RNLA's IRS disclosure reports do not disclose any contributions to federal candidates or political committees. Finally, there is nothing on the RNLA's website indicating involvement in federal campaigns. Accordingly, the available information does not support the Complaint's allegation that the RNLA is required to register as a political committee.

4. The Complaint Does Not Allege that Norm Coleman Violated the Act

The Complaint addressed Norm Coleman as a respondent. However, its only specific mentions of Norm Coleman are that he was a candidate for the United States Senate from Minnesota, that he filed an election contest on January 5, 2009, and that he established the Coleman Minnesota Recount Committee. *See Complaint* at 1. None of these activities violate the Act.

III. CONCLUSION

Based upon the foregoing, available information does not support an investigation into violations of the Act. Accordingly, we recommend that the Commission find there is no reason to believe that any of the Respondents violated the Act in this matter and that the file be closed.

IV. RECOMMENDATIONS

1. Find no reason to believe that the Republican National Lawyers Association violated the Act in this matter;

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2. Find no reason to believe that the Republican Party of Minnesota and Anthony Sutton, in his official capacity as treasurer, violated the Act in this matter;
3. Find no reason to believe that the Coleman Minnesota Recount Committee and Anthony Sutton, in his official capacity as treasurer, violated the Act in this matter;
4. Find no reason to believe that Coleman for Senate 08 and Rodney A. Axtell, in his official capacity as treasurer, violated the Act in this matter;
5. Find no reason to believe that Norm Coleman violated the Act in this matter;
6. Approve the attached Factual and Legal Analyses;
7. Approve the appropriate letters; and
8. Close the file.

Thomasenia P. Duncan
General Counsel

Ann Marie Terzaken
Associate General Counsel
for Enforcement

June 30, 2009
Date

BY: Mark Allen
Mark Allen
Assistant General Counsel

Jack Gould
Jack Gould
Attorney

Attachments:

1. January 7, 2009 Newmax.com article and RNLA Solicitation

Newsmax.com

Stop Al Franken From Stealing the Election

Wednesday, January 7, 2009 2:01 PM

By: Dick Morris and Eileen McGann

As John F. Kennedy once said, "sometimes partisanship demands too much." Watching Al Franken and the Democrats steal this election, vote by vote, is a horrific sight that makes a mockery of the electoral process, the fundamental element in our democracy.

If this travesty is allowed to stand, it essentially means that any close election constitutes an open invitation to steal the victory.

We must not allow the Minnesota Democrats to get away with this election heist. The Republican National Lawyers Association is getting the word out and needs all the support they can get.

You can help stop Al Franken by supporting the Republican National Lawyers Association — [Go Here Now](#).

Those who want the recount actually want to count ballots in 25 precincts — that would bring the total number of votes cast higher than the actual number of people who voted!

In Ramsey County, 177 more votes have been counted than people who voted on Election Day. The canvassing board, in effect, is admitting that it is counting fraudulent, duplicate ballots!

In some cases, absentee ballots, particularly from troops serving overseas, have been counted. In other cases not. One ballot, on which Franken was crossed out and replaced by "Frankenstein" was counted as a Democratic vote.

Apparently, when a ballot was challenged, a copy was made to facilitate examination. But, in many cases, the canvasser failed to label the ballot as a duplicate. Then, in the recount, all the ballots were counted, ensuring that the challenged vote was not only counted, but counted *twice*.

What makes all of this even more suspicious is that each of these errors inured to Franken's advantage and eroded Coleman's election night lead until the Democrat could claim victory.

At the same time that the Democrats are getting away with their chicanery in Minnesota, Gov. Rod Blagojevich is succeeding at appointing the successor to Barack Obama in Illinois.

The success of his appointment was inevitable once the Illinois Legislature, again with a heavy Democratic majority, refused to order a special election for the vacant Senate seat. They were so afraid that the Republicans might win the special balloting that they would rather let Blagojevich make the possibly corrupt appointment than give the voters the chance to make the decision.

We now will likely never know if the new Sen. Burris complied with Blagojevich's fantasies and actually paid for his seat in the Senate. But the very fact that we have the governor of the state on tape preparing to make

Attachment 1
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such a demand of whomever he appointed should give us pause.

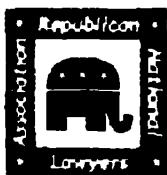
That Illinois' Democrats would rather have us speculate than give their voters the franchise is as revolting, in its own way, as the great Minnesota Senate seat robbery.

Mark Twain said that people should never have to see sausage being made or a law being passed. Add to that a recount in progress.

You can help stop Al Franken by supporting the Republican National Lawyers Association — [Go Here Now](#).

Join Dick Morris on a Special Cruise! Newsmax will be hosting its 10th Anniversary Cruise in June of 2009 and you are invited! Join Newsmax writers Dick Morris, Ronald Kessler, Christopher Ruddy, Dr. Russell Blaylock, Dr. David Browasteln, and many others on an incredible cruise of the Mediterranean. For full info — [Click Here Now](#).

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REPUBLICAN NATIONAL LAWYERS ASSOCIATION

Stop Al Franken From Stealing The Election

☒ **Yes, I want to help the Republican National Lawyers Association stop Al Franken from stealing the election.**

I am making my donation online below.

Please help the Republican National Lawyers Association stop Al Franken from stealing the election.

You can make the difference. As the recount in the Minnesota Senate race continues the RNLA needs assistance to help ensure a fair and honest result.

Special \$20 Bonus: Make a donation to the "Republican National Lawyers Association" and Newsmax will send you a free 4-month subscription to *Newsmax* magazine, a \$20 value. If you like *Newsmax*, you don't have to do anything — we'll automatically renew your subscription. There is no risk as you may cancel at any time for a refund on all unused copies. Available to new subscribers only.



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Pressing the submit button more than once may result in multiple charges.**

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Not authorized by any candidate or candidate's committee**

**Contributions to the Republican National Lawyers Association are not deductible as charitable
contributions for federal income tax purposes.**

Corporate funds are accepted

**Federal Law requires political committees to report the name, mailing address, occupation
and name of employer for all individuals who contribute in excess of \$200 in a calendar year.**

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